

¹ 5 U.S.C. § 8101 *et seq.*

his condition and realized its relation to his federal employment on June 16, 2021. Appellant stopped work that day.

Appellant submitted a statement dated June 16, 2021, in which he alleged that early in mid-May he began having mild pain in his lower abdomen which gradually worsened. He attested that one day he could not report to work as his pain was severe; however, the employing establishment did not answer his calls when he attempted to call in sick. Appellant later advised his supervisor that he would be undergoing surgery related to his hernia which he alleged was caused by lifting at work.

In a development letter dated June 25, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion, requesting that he clarify whether he was alleging a traumatic injury or an occupational disease. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

By letter dated July 6, 2021, the employing establishment controverted appellant's claim. Specifically, it stated that he had not informed them of his alleged injury until June 16, 2021. The employing establishment stated that appellant's duties included unloading the line as well as pushing and pulling full and empty containers.

In a July 7, 2021 response to OWCP's development letter, appellant clarified that he wanted to file a traumatic injury claim and attested that his job required him to lift, push, and pull very heavy container equipment. Appellant asserted that he did not have any other jobs, nor did he perform any strenuous activities outside of his job.

In a medical report dated May 21, 2021, Dr. Charles R. Gruner, a Board-certified general surgeon, indicated that he saw appellant in a follow-up appointment and diagnosed a non-recurrent unilateral inguinal hernia and epididymitis. He recommended surgical repair for appellant's left inguinal hernia.

OWCP received a report dated June 16, 2021 from Dr. Gruner, which related that appellant was two weeks out from his left inguinal hernia repair and was doing well.

By decision dated July 29, 2021, OWCP denied appellant's claim, finding that as the evidence of record was insufficient to establish that the claimed events occurred as described.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

² *Id.*

limitation of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁶

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁷ The employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on June 16, 2021, as alleged.

Appellant filed an occupational disease claim on June 24, 2021 wherein he alleged that he had sustained a traumatic injury causing a hernia. He noted that he first became aware of his condition and realized its relation to his federal employment on June 16, 2021. In response to

³ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

⁸ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

OWCP's development letter, appellant clarified that he was filing a traumatic injury claim, but he did not provide a date or description of the alleged incident. The Board finds, however, that appellant's description of the traumatic injury is imprecise and vague and fails to provide any specific detail or evidence establishing that an employment incident occurred as alleged.⁹

The Board, therefore, finds that appellant has not established an injury in the performance of duty.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on June 16, 2021, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *J.B.*, Docket No. 19-1487 (issued January 14, 2020); *W.C.*, Docket No. 18-1651 (issued March 7, 2019); see also *C.M.*, Docket No. 17-0627 (issued June 28, 2017).